90-1654

Supreme Court, U.S.
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

RAWLEY PATTON,

Petitioner,

v.

CHARLES C. VARDELL; F.M. (MIKE) SPEARMAN;
WILLIAM T. SMITH, Judge;
JOHN DOUDOUKJIAN, Deputy;
LEROY GATSON, Deputy,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does the decision and conduct of the Fourth Circuit of the United States in Rawley Patton v. Charles C. Vardell, et al. (unpublished to our knowledge and hereinafter referred to as the "panel decision") so depart from the reality of the case as to rights to petition for redress of grievances, by the repetitive use of untrue fictions utilized by the Court as a basis of approving summary disposition of a bona fide and important civil rights action where property has been taken without due process of law and without just compensation, contrary to the Fifth Amendment of the United States Constitution?

2. Does the panel decision so far deviate from the reocrd, from the reality of the matters below and from nominal

court procedure, as to reflect a denial of equal protection of the law, as to entertaining a motion for defendants and not entertaining motions filed by plaintiff, and from orderly proceedings, as to reflect a fundamental denial of procedural due process of law, because of petitioner's inability to obtain counsel and petitioner's age-old problem of "fighting City Hall"?

3. Does the panel decision of the United States Court of Appeals for the Fourth Circuit conflict with decisions of other United States Court of Appeals in the same subject matter, as well as decide a federal question in conflict with the accepted and usual course of judicial procedures as to call for a exercise of this Court's power of supervision, and further decide an

important question of federal law which should be settled by this Court, or by a decision that so conflicts with applicable decisions of this Court as to call for this Court's intervention?

4. Is this case of such imperative public importance as to justify deviation from normal appellate practice and require immediate settlement by this Court?

PARTIES

The parties to the proceedings are set forth as follows:

The Plaintiff-Appellant below is Rawley Patton, a private citizen and property owner. He is the Petitioner.

The Defendants-Respondents below are Charles C. Vardell; F.M. (Mike) Spearman; William T. Smith, Judge; John Doudoukjian, Deputy; and Leroy Gatson, Deputy, who were respectively officers acting under color of law from whom money damages were sought by reason of the violation of civil rights.

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BRIEF FOR PETITIONER

OPINIONS BELOW

The Petitioner, hereinafter called "Patton", represents to this Court that

he is aggrieved by the panel decision reported below as Rawley Patton v. Charles C. Vardell, as set forth in the Fourth Circuit orders of January 8, 1991, January 15, 1991, December 13, 1990, and October 23, 1990. These decisions are to the best of the knowledge of the undersigned, unpublished.

These decisions affirmed decisions in favor of the Defendants, and against Petitioner, as set forth in the Magistrate's Report and Recommendation entered December 4, 1989, and the judgement of the United States District Court for the District of South Carolina, Columbia Division, of December 20, 1989, the District Court's order filed December 20, 1989, decision filed March 1, 1990, decision filed March 19, 1990, March 29, 1990.

STATEMENT OF JURISDICTION

The panel decision was rendered initially on September 28, 1990. Plaintiff-Appellant filed a pro se Petition for Rehearing and Suggestion for Hearing en banc, and the Court agreed to grant the rehearing petition and consider the appeal on the merits. Thereafter, on January 8, 1991, the Court Clerk filed an order stating that the panel considered the Petition for rehearing and was of the opinion that it should be denied and that the suggestion for rehearing en banc be denied. The Court Clerk, on January 15, 1991, determined that the judgement of the Court of

December 13, 1990, should take effect as of January 15, 1991.

This petition is filed within 90 days thereof. The jurisdiction of this

court is invoked pursuant to Section 28 USC 1254(1).

STATUTE INVOLVED

The following section of Title 42, Section 1983, is involved in this case: 42 USC Section 1983 provides in pertinent part:

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States .. to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the person injured in an action at law, suit in equity, or other property proceeding for redress..."

STATEMENT OF CASE

A. THE DISTRICT COURT PROCEEDINGS

The Petitioner, "Patton", filed suit against South Carolina officials of

Richland County. The case grew out of outlandish "teach you a lesson" harassment, prosecutions and denial of due process. These officials were allegedly guilty of malicious and selective prosecution, illegal trespass upon private property and violation of constitutional rights of privacy, and rights under the Fourth Amendment, and the constitutional provisions providing that warrants shall not issue except upon probable cause.

The Complaint also charged that the various Richland County defendants took Patton's property without just compensation. The taking occurred by legislative fiat that denied Patton ability to use his property, where he had utilized the property for over 20 years for the repair of older cars, long before

any zoning ordinance; the zoning ordinance failed to provide for any grandfathering recognition of the taking of these vested property rights. The Complaint further charged that the defendants used harassing tactics, throwing this disabled elderly man in jail in the middle of the night, filing excessive and successive criminal charges against him, using intimidating tactics that were designed to interfere with his rights to litigate, and failure to use orderly proceedings.

Patton received a notice from Stacy S. Wilson, Deputy Clerk, that a proceeding in his case was set for December 1, 1989. Type of proceeding - Motion(s) Hearing/Status Conference. The same notice went to the U.S. Magistrate and others. Deputy Clerk Stacy S. Wilson

explained to Patton that the motions hearings/status conference was for both parties to meet an opportunity to speak, to file and hear motions, and discuss the conditions of the case. The U.S. District Court Magistrate did not obey the (Order) notice of Deputy Clerk Stacy S. Wilson. Nothing in the notice mentioned Rule 16 pretrial matters as the Magistrate's report and recommendation said. The notice did not mention Summary Judgement. See transcript. Summary Judgement was not mentioned until page 12 and 43. No one in the courtroom knew what the Magistrate was talking about till page 12.

The U.S. District Court judge ignored all of these basic issues; he confined his decision to the sole question of whether or not a county may

constitutionally pass a zoning ordinance. This was never the issue and was passed off because Patton could not afford an attorney.

Concerning the illegal prosecutorial tactics, the court ignored Patton's 4 motions with proof: Plaintiff's claim and demand to squash all defendant's affidavits because of perjury - claim and demand dismissal of summary judgement on grounds of perjury - plaintiff's claim and demand to squash 8 defected dated arrest warrants, no probable cause, and plaintiff's claim and demand to squash evidence obtained illegal. The U.S. Magistrate said, based on the materials submitted in support of the defendant's motion for summary judgement and the pleadings in this case. The only materials submitted was, memorandum of

law in support of motion for summary judgement, which is full of untrues (false) statements of the facts and defendant's affidavits which is full of hearsay and false statements. The defendants at the motions hearing/status conference, did not make any motions or pleadings. See transcript for proof. Each defendant and their attorneys signed a false affidavit under oath. They are guilty of perjury (18 U.S.C. sections 1621 and 1622) and violating rule 56-g, affidavits made in bad faith. The defendants states in their motion that Patton was tried on April 5, 1988 for the same violation. At the time of arrest and the motion for summary judgement, the case of 1988 was still in state litigation. This is double jeopardy (Fifth Amendment). Patton has an

audio/video tape of the false arrest (10 p.m.) showing the deputy's perjury in their affidavits.

Patton filed for a trial by jury, declared by the seventh amendment of the U.S. Constitution. The U.S. District Magistrate went against amendment seven and rules of civil procedure section 2072. See case file for proof of statement above. Concerning the abusive treatment of the elderly petitioner, the court ignored all issues. Concerning the taking of this long-established property rights usage, the court ignored all issues and ignored the long-established law in the favor of Patton, by way of precedent.

A review of the record shows that this hard working, disabled, veteran of World War II, who was unable to get

counsel, simply was ignored, was not heard and was mistreated throughout by the District Court and before the Court of Appeals.

Patton showed before the trial court that he had used the property for 28 years; that he had utilized the same under the corporation, R & G Painting Contractor, for the repair of older vehicles in the manner in which he was now being prosecuted, for most of that 28 years, and long before the zoning ordinance.

Patton showed that all of his neighbors signed petitions in favor of his continuing peaceful usage of the property that long pre-existed the zoning ordinance. Patton then showed that the prosecutorial tactics of selective prosecution, clear harassment, changing

of the ordinance so as to destroy any use of the property in the manner in which it had been used, all were done without due process of law and without paying any just compensation for this taking of private property. The district court ignored all of these issues, confining itself solely to the sterile question of whether or not a county may pass a constitutional ordinance -- never an issue in debate in this case, and realistically solely the product of the communication problem because the plaintiff had not been properly educated as a lawyer and could not afford a lawyer.

The only argument below made by defendants against Patton was solely based on the case of Euclid v. Ambler Realty Co., 272 US 365, 71 L.Ed. 303, 475

9 S. Ct. 114 (1926)). The case held that a city may adopt a zoning ordinance. The District Court in this case then chose to decide one issue, only, ignoring all of the other bona fide issues before the court in a proper manner. The District Court below decided only that a county could pass a constitutional zoning ordinance. This irrelevant skeletal decision and denial of any careful consideration of the matters raised by Patton was a shocking display of a high-handed manner in which some courts may use against pro se American citizens with bona fide cases. It merits consideration by this Court.

The Magistrates Report and Recommendations, filed December 1, 1989, is a clear example of abuse of civil process where a bona fide plaintiff is

unable to afford counsel. The Magistrate ignored all of the issues raised by the plaintiff. The Magistrate stated that the gist of Patton's complaint was confined to the theoretical question of use of a zoning ordinance against him.

The Magistrate ignored the issues regarding illegal taking and the unusual procedures of arresting the plaintiff in the middle of the night, have audio tape of deputy's forced enter, house showing they perjuryed in affidavits of October 6, 1989, denying him any forms of procedural protection. The Magistrate ignored how the focus on selective and repetitive prosecution of Patton solely for his 28-year legal use of his property presented a genuine issue.

The sole basis of the Magistrate's decision dated December 1, 1989, was

reliance on Euclid, supra., stating only that a zoning ordinance may involve a "taking" which does not require compensation under the Constitution -- clearly a matter irrelevant to this suit.

On December 18, 1989, Judge Simons rubber-stamped the Magistrate's decision, solely based on Euclid. The Judge failed to consider matters raised by the plaintiff, and entered an order even before the judge received or considered the Plaintiff's timely filed defense to summary judgement. Patton sought in vain to ever get the District Court to acknowledge or consider the merits of his case. Patton was unsuccessful in any respect; no reasoned decision of the matters raised by the plaintiff was ever given in the District Court.

Then followed a series of District

Court and Court of Appeals conduct through orders, that is almost a law school lesson in legal buffoonery. Thereafter, every jurist refused to consider what the case was about.

B. THE PANEL DECISIONS

The Fourth Circuit then first affirmed and dismissed the appeal on the basis that the appeal was not timely followed. This was such a ridiculous decision that when the plaintiff filed his petition for rehearing, the Fourth Circuit was forced to reverse itself, immediately.

Any further consideration of the District Court's error was then foreclosed simply because no Fourth Circuit judge cared to comment on the refusal to consider any of the issues in this case brought by this pro se

plaintiff. It became clear that the real error of law by the plaintiff was that he was not an attorney and could not afford an attorney.

Specifically, the panel only affirmed the Euclid holding. The panel refused to consider (1) that the District Court ignored under well-established federal cases, that there was a genuine taking without just compensation, (2) that the District Court overlooked the genuine issue of interference with property rights, without procedural due process of law, (3) that the District Court by-passed the facts in a genuinely raised case of abusive prosecution, selective prosecution and harassing prosecution so as to interference with someone's standing up for their rights to litigate, as well as the selective

consideration by the courts of cases based solely upon the standing and calibre of lawyers that a litigant might be able to hire and (4) that Patton was denied First Amendment protection to have his meritorious case adjudicated because he could not afford legal counsel.

ARGUMENT

A. THE PANEL DECISION SO DEPARTS FROM THE USUAL AND CUSTOMARY APPLICATION OF LAW REGARDING "JUST COMPENSATION" FOR A TAKING SUCH AS THE TAKING OF THE 28-YEAR USAGE IN THIS CASE AS TO CALL FOR THE EXERCISE FOR THIS COURT'S POWER OF SUPERVISION.

The District Court offered only anemic support for summary judgement, based solely upon the bare strawman proposition that a county may constitutionally pass a zoning ordinance without its necessarily being a taking. This was not the case presented by Patton. Defendants deceptively framed

this as the issue and it stuck.

The District Court ignored the fact of a 28-year usage of this property, uncontradicted as to the plaintiffs lawful usage in repairing old cars, is well-established. It ignored that there was a taking under federal law.

The decision in Euclid v. Amber Co., 272 US 365, 47 S. Ct. 114, 71 L.Ed. 303 (1926), was that arbitrary and unreasonable or substantially unrelated measures to public health safety and general welfare would not stand, while reasonable ordinances may stand. Euclid was not in any way dispositive of the case below.

It is clear that the debatable questions of the reasonableness, wisdom and propriety of a zoning ordinance are not for the determination of the courts

but legislative bodies. City of St. Paul v. Chicago, St. Paul, Minneapolis and Omaha Railway Co., 413 F.2d 762, 767 (8 Cir. 1969). We call this a strawman because Patton never based his case to the contrary.

Patton has the burden of proving that a zoning provision is unreasonable and arbitrary. See Exhibit A, B and C in case file, statement from Health and Environmental Control about Ordinance No. 7-1.4(6) and petition of neighbors. McMahon v. City of Dubuque Iowa, 255 F.2d 154, 159 (8 Cir. 1958). He raised that issue, but the court refused to consider that the cut-off, without grandfathering protection of a 28-year usage, was such an unlawful taking.

Another important consideration which the District Court ignored was the

issue of whether or not there is discrimination under the zoning ordinance, against Patton. Steel Hill Development, Inc. v. Town of Sanbornton, 338 F. Supp. 301 (D.N.H.1972).

The rezoning in this case, and the subsequent mistreatment of Patton, clearly established a total and absolute ruin of the economic value of the property for the plaintiff. Compare, Prentiss v. American University, 214 F.2d 282 (D.C. Cir 1954).

It is clear that the district court did not enter into any consideration of whether or not justice and fairness required that the economic injury caused to plaintiff and to plaintiff alone by public action be compensated by government rather than remain disproportionately concentrated on

plaintiff alone. Penn Central Transportation Co. v. City of New York, 98 S.Ct. 2646 (1978), See 439 U.S. 883, 99 S.C. 226.

Further, the panel refused, as noted in the Penn Central case to consider whether the particular economic restriction was rendered invalid by the government's failure to pay for any losses incurred on plaintiff alone, making the property useless to the plaintiff. The issue of what constitutes a taking for the purposes of the Fifth Amendment has been recognized as a problem of considerable difficulty. It is clearly the intent of the Fifth Amendment to bar government from forcing some people such as the plaintiff, alone, to bear public burdens which in all fairness and justice should be borne by

the public as a whole. Armstrong v. United States, 364 U.S. 124, 40, 49, 80 S.C. 1563, 1569, 4 L.Ed.2d 1554 (1960). This court has not established any set formula for determining when justice and fairness requires that economic injuries be compensated by government rather than remain disproportionately concentrated on a few. Goldblatt v. Hempstead, 369 U.S. 590, 594, 82 S. Ct. 987, 990, 8 L.Ed.2d 130 (1962).

The District Court even refused to consider the particular circumstances of the case to Patton as required by federal law. United States v. Central Eureka Mining Co., 357 U.S. 155, 168, 78 S.Ct. 1097, 1104, 2 L.Ed.2d 1228 (1958); United States v. Caltex, Inc., 344 U.S. 149, 156, 73 S.Ct. 200, 103, 97 L.Ed. 157 (1952).

The District Court refused to consider any of the talismatic standards, such as the economic impact of the newly passed zoning regulation on Patton, and the extent to which the regulation interfered with the distinct investment backed expectations of the plaintiff, as set forth in Goldblatt. The court refused to consider the character of the government's actions in this case and ignored that a taking may be more readily found by government when the interference with property can be characterized as a physical invasion by government, such as we found in this case. See, for example, United States v. Cosby, 328 U.S. 256, 66 S.Ct. 1062, 90 L.Ed. 1206 (1946).

It is clear that the motion for summary judgement in this case brought by the defendants only tested the ability to

pass a zoning ordinance and in no way attempted to set up an issue challenging plaintiff's claim that the economic value of the property was totally destroyed. The court ignored the entire doctrine set forth in Pennsylvania Coal Co. v. Mahon, 260 U.S. 293, 43 S.Ct. 158, 67 L.Ed. 322 (1922). There the court held that a state statute that substantially furthers important public policies may so frustrate investment backed expectations as to amount to a taking.

It is clear that the court below ignored the distinctions made by this Court. The courts will not require just compensation based on the mere change of ordinance where there have not been vested property rights. The courts always require just compensation where the change in ordinance takes away the

beneficial economic use of the property, established and vested, without any grandfathering. 82 Am.Jr.2d, Zoning & Planning, Section 178. See also, State v. Danner, 159 Fla. 874, 33 So.2d 45 (1947).

It is well recognized that there is a Fourteenth Amendment and Fifth Amendment violation by way of deprivation of vested property rights by any prohibition of a pre-existing nonconforming use or a taking away of a vested property right in the use of property. DesJardin v. Greenfield, 262 Wisc. 43, 53, N.W.2d 784 (1952).

We recognize that there is a clear line of cases where zoning ordinances may interfere with plaintiffs' rights and no remedy exists. Stoddard v. Western Carolina Regional Sewer Authority, 784

F.2d 1200 (4 Cir. 1986). But here, when a 28 year commercial usage is destroyed under a zoning regulation, simply does not go to whether or not automobiles are licensed, there is clearly an arbitrary and unreasonable abuse of vested property rights. See, for example, First Assembly of God v. City of Alexandria, 739 F.2d 942 (4 Cir. 1984). Such purpose clearly does not promote public health safety and welfare, but is rather an attempt to evade vested rights under a superficial appearance of zoning regulations.

A zoning regulation is an unconstitutional taking when it does not substantially advance legitimate state interest or denies an owner economic viable use of his land. Agins v. City of Tiburon, 447 U.S. 255, 261-62 (fn 8) (1980). Moore V. East Cleveland, 431

U.S. 494 (1977). Nollan v. California Coastal Commission, 107 S.Ct. 3141 (1987). First English Evangelical Lutheran Church v. Los Angeles County, 107 S.Ct. 2378 (1987).

B. THE COURTS BELOW ERRED IN REFUSING TO ALLOW FACTUAL ADJUDICATION OF THE DENIAL OF CIVIL RIGHTS BY RICHLAND COUNTY OFFICIALS IN THE WAY THE CASE WAS PROSECUTED.

The circumstances in which plaintiff was treated in this case clearly raised issues of procedural due process as well as taking. Scott v. Greenville County, 716 F.2d 1409 (4 Cir. 1983).

The only difference between the plaintiff's case and the Scott case is that Scott was a wealthy real estate developer; Patton is a disabled veteran attempting to keep his small business intact. patton is clearly entitled to process that is due, rather than midnight

jailings, successive prosecutions, and a district court action in which the issues plaintiff raised were not even considered. Logan v. Zimmerman Brush Co., 455 U.S. 422, 428, 102 S.Ct. 1148, 1153, 71 L.Ed.2d 265 (1982); Detweiller v. Virginia Dept. of Rehabilitative Services, 705 F.2d 557, 559 (4 Cir. 1983).

The court did not even consider in this case involving a poor litigant whether or not there was any reasonably grace period allowed plaintiff in the midnight jailings and successive prosecutions. Compare, Major Media of the Southeast, Inc. v. City of Raleigh, 792 F.2d 1269, 1273-74 (4 Cir. 1986), cert. den, 479 U.S. 1102 (1987).

It is interesting to note that when plaintiff brings a bona fide action

showing horrible circumstances, the Fourth Circuit ignores the case, and yet when a large developer brings a case showing not nearly as much, the Fourth Circuit is quick to hold that the matter should be adjudicated. Compare, Beacon Hill Farm Associates v. Louden County Board of Supervisors, 875 F.2d 1081 (4 Cir. 1989). In that case, while the court observed that Euclid v. Amber Realty Co. held that a land owner could attack the facial validity of a land use ordinance, it would depend upon interpretation as to what kind of an attack was made. Because plaintiff was untrained in the law and these legal niceties, the court simply dismissed, without inquiry, the nature of the conduct below.

It is clear that the plaintiff below

was not making a mere attack on the ability to pass an ordinance, but was rather attacking the illegal, confiscatory, discriminatory and barbaric use of the zoning ordinance to victimize the plaintiff. See, for example, Keystone Bituminous Coal Associates v. DeBenedictis, 480 U.S. 470, 494, 107 S.Ct. 1232, 1247, 94 L.Ed.2d 472 (1989) where the court recognized the "important distinction between a claim that the mere enactment of a statute" is unconstitutional and "a claim that the particular impact of government action on a specific piece of property" is unconstitutional. In this case, it is clear that the plaintiff brought a property claim that deserved relief and the district court and the court of appeals simply ignored this matter.

C. THE COURTS' REFUSAL TO AFFORD PATTON HIS RIGHTS TO PETITION FOR REDRESS OF GRIEVANCES IN THE ADMINISTRATION OF THE RULES BY FAILING TO CONSIDER AND ADJUDICATE THE ISSUES RAISED BY PATTON CALLS FOR THIS COURT'S SUPERVISION AND INTERVENTION.

(i) The Magistrate interfered with legal precedent and procedural due process in denying the undersigned the right to represent himself.

The concept of counsel, tracing its historical roots, finds that the very first lawyers were solely personal friends of litigants; these lawyers were brought to court so that the accused might "take counsel" with them before pleading. 1 F. Pollack & F. Maitland, The History of English Law 211 (2d Ed 1909). These first attorneys were personal agents, usually without professional training and solely appointed by litigants with royal

permission to carry on affairs and to assist the litigant. Ibid., at 212, 213.

The only time the litigants were forced to have counsel was in proceedings known as "Star Chamber Proceedings." Faretta v. California, 422 U.S. 806, 821-822 (1 J. Stephen, A History of Criminal Law of England, 341-342 [1883])(5 W. Holsworth, A History of English Law, 155-214 [1927]).

In colonial America, insistence on full self-representation by any litigant was more fervent than had ever been practiced in England. Faretta v. California, 422 U.S. 806, 810-812. The colonists brought with them an appreciation of individual self reliance and a tradition of mistrust of lawyers that manifested itself in a strong American tradition toward allowing self-

representation. D. Boorstein, The Americans: The Colonial Experience, p. 197 (1958). When the colonies were settled, the term "lawyer" was synonymous with cringing sycophant attorneys, those servants of the crown and arbitrary justices of the King's court, who were clearly bent on conviction of anyone who opposed the King's wishes, and who were known to twist the law to obtain favoritism toward the King. C. Warren, History of the American Bar, p. 7 (1911).

In the 18th Century, lower classes identified lawyers only with the very rich. Friedman, A History of the American Law, p. 23 (1970). The years of revolution and confederation saw anti-lawyers bias grow to a fevered pitch. Friedman, A History of American Law, p. 82 (1970). In this framework, our

Constitution was forged during great period of anti-lawyer sentiment and the tradition of self-representation being strongly preserved. H. Rankin, Criminal Trial Proceedings of the General Court of Colonial Virginia, pp. 67, 89 (1965).

It was in this context that the United States Supreme Court recognized that the right of a litigant to represent himself is supported by the First, Fifth, Sixth, Eighth and Fourteenth Amendment to the United States Constitution. Faretta v. California, 422 U.SA. at p. 818.

It has been specifically recognized that someone who is defending himself is entitled to call and interrogate favorable witnesses, to have an adequate opportunity to prepare for and cross-examine personally adverse witnesses, and to direct the orderly introduction of

evidence. California v. Green, 399 U.S. 149, 176.

It is noteworthy that each State of the United States affords self-representation in all criminal cases. 422 U.S. at p. 812, footnote 9. This is done by the Constitution of 36 states (footnote 10). Many of the States hold that the United States Constitution gives this right.

The United States Supreme Court has recognized this right in penal activities which, of necessity apply to an activity such as charges being brought against an attorney in this case. Adams v. United States, 317 U.S. 269, 279.

The United States Supreme Court has held: "Neither the historical conception of due process nor the vitality derived from progressive standards of justice

denies a person the right to defend himself or confess guilt. Under appropriate circumstances the Constitution requires that counsel be tendered; it does not require that under all circumstances be forced upon a defendant." Charter v. Illinois, 329 U.S. 173, 174; Moore v. Michigan, 355 U.S. 155, 161.

In the Adams case of United States Supreme Court held at 317 U.S. 279-280:

> "The right to assistance of counsel and the correlative right to dispense with a lawyer's help are not legal formalisms. They rest on considerations that go to the substance of an accused position bet for the law ... What were contrived as protections for the accused should not be turned into fetters...
>
> "To deny an accused a choice of procedure in circumstances, in which he, through a layman, is as capable of making an intelligent choice, is to

> impair the worth of the great Constitutional safeguards by treating them as empty verbalisms.
>
> "...When the administration of the criminal [penal] law ... is hedged about as it is for the Constitutional safeguards for the protection of an accused, to deny him in the exercise of his free choice the right to dispense with some of these safeguards ... is to imprison a man in his privileges and call it the Constitution."

A pro se litigant must be allowed a fair chance to present his case in his own manner. McKaskle v. Wigging, 465 U.S. 168 (1984).

The test of procedural due process is always whether the non attorney was allowed "actual control over the case he presented". The Bill of Rights gives a party "the absolute primary right to conduct [his] own defense in propria persona ..." United States v. Platner, 330 F.2d 271 (2 Cir). It is implicit in

the Fifth Amendment due process rights, as well as the Sixth Amendment right to the assistance of counsel that a litigant have the right, "personally to manage and conduct his own defense." Ibid., 330 F.2d at p. 274; United States ex rel Maldonado v. Denno, 348 F.2d 12, 15 (2 Cir); MacKenna v. Ellis, 263 F.2d 35, 41 (5 Cir); Haslam v. United States, 431 F.2d 362, 365 (9 Cir).

It is clear in this penal proceeding that the letter and spirit of the law, including the federal statute allowing one to proceed pro se, have been violated by the Magistrate. We note with interest, that defense counsel in this case would treat these Constitutional protections as a matter that can be easily waived, upon an alleged notice never received, and with time limits

never communicated to Patton and thus have justice thus frustrated. It is not wonder that there has been suspicion of counsel when such arguments can be made on behalf of the rich and powerful.

(ii) Retaliation against Patton for being unable to afford counsel because of procedural and grammatical niceties is an interference with the basic purpose of the Civil Rights Acts.

The politicalization of the American Judiciary, and even the American Bar Association, by their public invocation of political stands, and their general official support of liberal positions, has had an effect of shock on the American public.

Recently we have seen the defeat, without even a campaign, of an incumbent Justice in the State of Washington. The

confidence in the judiciary and the Bar, by all objective standards, is shown to reach new lows.

The Complaint in this case was brought under the tradition and with the protection of the purposes of the Federal Public Policy expounded upon in the Civil Rights Statutes. Section 1981 and Section 1982 of Title 42 of the United States Code have their origin in the first section of the Civil Rights Act of 1866. This legislation was passed by the same Congress that passed the Fourteenth Amendment as any student of history knows. It was reenacted in 1870, by the Act of May 31, 1870, Section 18, 16 Stat. 144.

In furtherance of the broad Congressional purpose in the Civil Rights Acts of 1866, the Acts were interpreted

to guard against any improper interference "from any source whatsoever, whether governmental or private." Jones v. Mayer Co., 392 U.S. 490, 424 (1968). Indeed, the Act had criminal sanctions for conduct such as we see in the bringing an action of a right protected under the act. Act of April 9, 1966, ch. 31, Section 2, 14 Stat. 27.

The Act was specifically passed, it was found, to deal with hostile groups such as the Ku Klux Klan, operating outside the law, as well as governmental action, and was clearly designed to aim at the type conduct alleged in the Complaint filed in this case. 392 U.S. at 436.

Given the remedial purposes of Section 1981, the Courts have held that the Statute should be liberally

construed. Long v. Ford Motor Co., 496 F.2d 500 (6 Cir 1976); Johnson v. Goodyear Tire & Rubber Co., 349 F.Supp. 3 (D.C. Tex. 1972), modified, 491 F.2d 1364 (5 Cir 1974); Cornelius v. Benevolent Protective Order of Elks, 382 F.Supp. 1182 (D.C Conn. 1974); Player v. Alabama Dept. of Pensions & Security, 400 F. Supp. 249 (D.C. Ala.); Aff'd, 536 F.2d 1385 (5 Cir. 1975); Speiss v. C. Itoh & Co., 408 F. Supp. 916 (D.C. Tex 1976); Taylor v. Flint Osteopathic Hospital, 561 F. Supp. 1152 (D.C. Mich. 1983); See also, Common, Historical Reconstruction, Reconstruction History, and the Proper Scope of Section 1981, 98 Yale L.J. 541 (1989); The Importance of Section 1981, 73 Cornell L. Rev. 596 (1988).

The bulk of cases under Section 1982 have involved real property, but cases

have also been used to enforce interference with personal and intangible rights. Section 1982 is also entitled to the remedial liberal construction in order to effectuate the remedial purposes. 3 C. Sands, Southerland Statutory Construction, Section 60.01 (4 Ed. 1972); Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 237 (1969).

The courts have favored liberal interpretation of Section 1983. Basista v. Weir, 340 F.2d 74 (3 Cir. 1965); Green v. Dumke, 480 F.2d 624, 628 fn 7 (9 Cir 1973).

To review the Civil Rights Statute is to see the tremendous the courts have taken to see that conduct such as we see in this motion for sanctions is not allowed to interfere with the ability to obtain counsel or to discourage counsel

from participating in civil rights actions. It was for this very reason that the Congress encouraged counsel to participate by the passage of generous fee provisions. However, even this has not been successful in enlisting sufficient counsel to be available to the vast numbers of the public who wish to obtain counsel and are unable to do so in protecting their civil rights.

The facts of the case at Bar are a glaring testimony to this.

(iii) The Motion for Summary Judgement on this record ignores the historical and statutory background of the Civil Rights Statutes.

The Civil Rights Statutes were intended to be used by a vast array of citizens and a vast array of circumstances. The United States

Supreme Court recently stated in Wilson v. Garcia, 105 S. Ct. 1938, 1946 (1985):

> "A catalog of...Constitutional claims that have been alleged Section 1983 would encompass numerous and diverse topics and subtopics: Discrimination in public employment on the basis of race or the exercise of First Amendment rights, discharge or demotion without procedural due process, mistreatment of school children, deliberate interference with the medical needs of prison inmates, the seizure of chattels without any advance notice or sufficiency to be heard--to identify only a few."

And the entire plethora of these and many other well-established rights were alleged and documented in the case at bar.

The courts have noted that there has been a tremendous increase in Section 1983 cases, going from 270 in 1961 to over 30,000 in 1981. Patsy v. Board of Regents, 457 U.S. 496, 533 fn 20 (1982).

A large measure of this was the Congressional mandate in 1966 that brought about the Civil Rights Attorneys Fees Award Act of 1976, 42 U.S.C. Section 1988. In order to understand the significance of this act, it is necessary to review the conduct of the 42nd Congress in 1871 and the campaign of violence and deception, fomented by the Ku Klux Klan, which denied decent citizens their civil and political rights. Wilson v. Garcia, 105 S.Ct. 1938, 1947 (1985).

The approach of the Congress was considered part of the crucial ingredients in the basic alteration in the federal system accomplished during the Reconstruction Era. Patsy v. Board of Regents, 457 U.S. at 502-503. The very purpose of Section 1983 was to

impose the federal courts between those in power or the mob rule to become guardians of the peoples' federal rights and to protect citizens from unconstitutional conduct. Mitchum v. Foster, 407 U.S. 225, 242 (1972), quoting from ex-parte Virginia, 100 U.S. 339, 346 (1879).

All that need be all in order to satisfy the requirements of pleading of civil rights complaint are (1) the plaintiff must allege that some person has deprived them of a federal right and (2) he must allege that the person who has deprived him of that right acted under color of state or territorial law." Gomez v. Toledo, 446 U.S. 635, 6408 (1980); Baker v. McCollan, 443 U.S. 137, 140 (1979); Flagg Bros. v. Brooks, 436 U.S. 149, 155 (1978); Adickes v. S. H.

Kress & Co., 398 U.S. 144, 150 (1970). And the requirements for pleading under Section 1981 and 1982 were even simpler.

Further, the rule of standing and the requirement that a party only assert the rights of his that have been violated is relaxed in federal civil rights cases where there is a special relationship between those asserting the rights and those injured. See, for example,, Carry v. Population Serv. Int'l, 431 U.S. 678 (1977); Craig v. Boren, 429 U.S. 190 (1976); Pierce v. Society of Sisters, 268 U.S. 510 (1925). And, especially, where there were pragmatic obstacles, such as the denial of counsel in this case, to bring about enforcement of rights. Secretary v. Joseph H. Munson Co., 104 S.Ct. 2839, 2847 (1984), Singlet V. Wulff, 428 U.S. 106 (1976). See Page,

Petition for Writ of Certiorari - 22, supra., quoting from Village of Schaumburg v. Citizens for Better Environment, 444 U.S. 620, 634 (1980); Broaderick v. Oklahoma, 413 U.S. 601 (1973).

The courts relaxed the rule in the practical expression of protection of rights on the "assumption ...[that failure] may cause others not before the court to refrain from constitutionally protected speech or expression." This is especially true of the right to petition for redress of grievances under the same First Amendment.

It is noted that states may not even apply preconditions to the right to bring the protected and hallowed 1983 actions. Rosa v. Cantrel, 705 F.2d 1208, 1221 (10 Cir. 1982); Brandon v. Board of

Education, 635 F.2d 971, 973 (2 Cir 1980); Willis v. Reddin, 418 F.2d 702 (9 Cir 1969).

It is clear that the courts, in the interest of encouraging attorneys to assist in civil rights actions have provided as the only remedy a diminution of fee awarded for supposed poor quality of work. It is clear, on the basis of the allegations made against this attorney as well as clear public policy that these motions are improper and further that procedures should have been molded and allowed to be molded by pro se attorney.

(iv) The First Amendment guarantee against chilling and interference of the right to petition for redress of grievances, as well as the standards of Federal Rule (Federal Rules of Civil

Procedure) require this Court's intervention in this case.

The Defendants filing any motion for dismissal or summary judgement have an affirmative duty to investigate the facts and to research the law. Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d 1531, 1536 (9th Cir. 1986); Albright v. Upjohn Co., 788 F.2d 1217 (6th Cir. 1986); Southern Leasing Partners, Ltd. v. McMullan, 801 F.2d 783, 788 (5th Cir. 1986), and then proceed only in good faith and not for improper purposes. In re Itel Securities Litigation, 791 F.2d 672 (9th Cir. 1986), cert den, 107 S.Ct. 880 (1987). Any conduct, harassing (such as deciding the case before Patton was even allowed to answer) or attempting to intimidate (such as the use of legal gobblygook language)

is a violation of the court-imposed standards. Eske v. Hynes, 601 F. Supp. 142, 144 (E.D. Wisc. 1985).

The Court must examine the conduct of each of the attorneys, and the Magistrate and Court of Appeals panel, and determine if there has been a violation of the standards, or procedures that are frivolous, unreasonable or without factual foundation. Zaldivar v. City of Los Angeles, 780 F.2d 823, 831 (9th Cir. 1986); King v. Idaho Funeral Service Assn., 862 F.2d 744, 746-47 (9th Cir. 1988); Hudson v. Moore Business Forms, Inc., 836 F2d 1156, 1162-63 (9th Cir. 1987); Eastway Construction Corp. v. City of New York, 762 F.2d 243, 254 (2nd Cir. 1985).

In the case, the legal establishment has operated to decide and dismiss a case

never brought by Patton. They did so with neatness, legal nicety and sophistication. But they did so dishonestly. This is why confidence in the courts is eroded. Scores of citizens, like Patton, see that the courts are serving money and power and not justice. This Court is called to intervene and correct this.

D. CONCLUSION

Patton asks this court to take control of this case and assist justice to America by protecting against the sophisticated the subtle destruction of the Civil Rights Acts, procedural due process and the First Amendment right to petition for redress of grievances in the day-to-day administration of the courts. We ask this Court to stop abuse that allows the courts only to favor the rich

and powerful and to abusively use laws designed to protect ordinary citizens, where these ordinary citizens fighting for their very right to exist cannot afford high-priced legal counsel. The failure of this Court to speak out on this issue has led to a dramatic deterioration of confidence in the judiciary and disrespect for the courts. This case presents a dramatic example of judicial violence against the Civil Rights Act and a classic example of tolerance of fundamental denial of procedural due process, as well as a shocking commentary on what happens when a litigant cannot afford high-priced counsel, while the other side does use such high-priced counsel, and the result is a decision on and issue in no way related to the poor litigant's case.

In this case Rawley Patton maintained a business at his premises four acres for 28 years. Business Incorporated 1965. "County Zoning 7-1-4(6) started 1977 automotive vehicles or trailers of any kind or type without current license plates and current inspection stickers, if applicable, shall not be parked on any residentially zoned property other than in completely enclosed buildings."

R & G Paint Contractor, inc. Rt. 3 Box 174, Columbia, S.C. 29206. Later became 114 Horseshoe Circle, 29223.

"This is to certify that the above identified vendor, making retail sales of tangible personal property for storage, use or other consumption within the State of South Carolina has registered with the South Carolina Tax Commission as required

by the provisions of Section 65-1429, Code of Laws, 1962" quoted from year end tax receipt. The R in R & G stands for Rawley, Patton owner still current. All of his neighbors signed petitions favoring his right to continue this business. The County of Richland not only attempted to legislate away his property rights, vested for 28 years, but did so without any just compensation, grandfathering, or threshold decisional process assuring against arbitrary and capricious legislative conduct contrary to the Fifth and Fourteenth Amendments. Following this, the County of Richland sought to enforce their questionable legislation, not by some fair hearing process or reasonable proceeding, but by Gestapo-like midnight raids on Patton, throwing him in jail with false

affidavits and three affidavits for arrest warrants dated 258 day 258, 258 and one dated 285 day of August, 1989 and 2 warrants no effective dates, filing of successive (identical) and multiple (8) criminal complaints and trampling upon any opportunity for him to defend himself. Patton had to put his property up for a $3,200.00 bond to get out of jail after 22 hours.

Upon Patton's attempting to approach the courts, he was met with a judicial bureaucracy using a foreign language of legal gobblygook. He was presented with a summary judgement having nothing to do with his complaints, merely raising the question that a municipal body may pass a zoning ordinance. The court dismissed his case even before he was allowed to respond within time, holding nicely that

a municipal body could pass a zoning ordinance, but never one considering the array of transgressions against federal law and civil rights clearly apparent in the case. Solely because Patton was unable to afford an attorney, none of the issues were ever examined.

Richland County South Carolina is in a high state of corrupt government, I have proof by way of sworn affidavits and court transcripts and my personal experience.

The attorney for defendants (Vinton D. Lide, in his memorandum of law stated that, the error in my interpretation of the law was clearly pointed out to me in the circuit court order of Judge Sidney T. Floyd. Floyd's order was drawn up by the county attorney William F. Able which is full of untrues (perjury). Able state

that magistrate Smith, where the case was appeal from, took judicial notice of S.C. and U.S. Supreme Court decisions such as, Village of Euclid v. Ambler 272 U.S. 365, (1926). Attorney Able or Judge Floyd was not at magistrate Smith's court, and there is no case mention in the transcript. County attorney Able drew up the order and Judge Floyd signed it, a false affidavit a crime. There is other untrues in the order I have the proof. Judge Floyd told the stenographer not to record the hearing. I told the judge that I wanted a transcript, of the hearing Judge Floyd said I did not need one. He told the stenographer again and she did not record. I don't have enough pages to put all the proof in this petition, but I do have the proof of the guilt of the following conspirators, all

these is zone related conspiracy. Judge Ernest Kinard illegal court procedure, let county attorney Able a defendant in a default case (Rule 55) start the case, file motison at start of hearing should have file 10 days before. Able perjury his self in court Judge Kinard let him get by with it and rule for him. Julius H. Beggett did the same. Magistrate William T. Smith the same. In magistrate Smith's court April 5, 1989, Inv. Cornise investigator with Richland County Sheriff's Department under sworn oath that Patton was arrested under warrant B954293 Jan. 27, 1988 before Patton's place was searched. Search Warrant dated January 28, 1988 show how discrimination Richland County is see state newspaper, Columbia, S.C., April 2 & 3, 1991. Former USC President James Holderman non-

resident. Charges stem from an investigation into $25,000.00 in payments he received from the McNair Law Firm of Columbia and possible state income tax evasion case. Judge J. Ernest Kinard let Holderman free on a $10,000.00 personal recognizance bond and he did not even go to the jail. Much less in jail. Big money power. Patton had to put up his property (land) .$3,200.00 bond and spent 22 hours in jail. County had to check property deed. Magistrate told Patton he could not get out on a P.R. bond and he could expect 8 to 10 arrest warrant a week till he learned better, speaking about his antique model A Fords. Patton try to explain that he was under the grandfather clause, magistrate would not listen.

Patton appealed to the Court of

Appeals. That court immediately threw the case out as not timely filed, totally in error and with a degree of lack of attention that would embarrass a first year law student. Thereafter, the Court of Appeals refused to even discuss or acknowledge the fact that the case was not about an issue of whether or not a municipal body could pass a zoning ordinance, but about numerous other issues never discussed by the court.

It is clear that our courts, more than 50 years after the sweeping reforms of the new Federal Rules are being allowed to disintegrate into a caste-like system where the most powerful and sophisticated lawyers, not justice, prevail. This Court has an opportunity in this case to intervene and address this issue in the important area of the

taking of a vested business interest in property without any protection, compensation or legal redress, save by the rich and powerful.

For the foregoing reasons, Patton contends that he had been unjustly denied his day in court. This resulted because the panel sharply deviated from common law (Gods Law) and constitutional law, and what's right and justice. Patton prays that his petition for certiorari be granted.

DATED this 4th day of April. 1991.

Respectfully Submitted,

Rawley Patton

RAWLEY PATTON, Pro se

Supreme Court, U.S.
FILED
APR 5 1991
OFFICE OF THE CLERK

(2)

90 - 1654

No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

RAWLEY PATTON,

Petitioner,

v.

CHARLES C. VARDELL; F.M. (MIKE) SPEARMAN;
WILLIAM T. SMITH, Judge;
JOHN DOUDOUKJIAN, Deputy;
LEROY GATSON, Deputy,

Respondents.

APPENDIX PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Rawley Patton, Pro Se
114 Horseshoe Circle
Columbia, S.C. 29223
(803) 788-3128

INDEX TO APPENDIXES OF PETITION FOR A WRIT OF CERTIORARI, THAT RAWLEY PATTON, PETITIONER FILED (POSTMARKED) APRIL 5, 1991

APPENDIX A: Magistrate's Report and Recommendation adopted by the District Court of South Carolina, Columbia Division.

APPENDIX B: Opinion of United States Court of Appeals for the Fourth Circuit.

APPENDIX C: Supreme Court of the United States, extended the time for filing a Petition for a Writ of Certiorari, till May 8, 1991.

APPENDIX A

IN THE UNITED STATES COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Rawley Patton, Plaintiff, vs. Charles C. Vardell, F.M. "Mike" Spearman Judge William T. Smith, Deputy John Doudoukjian, Deputy Leroy Gadsen, and others involved in the conspiracy against the plaintiff, each in their individual capacities. Defendant.	CA No. 3:89-2280-6B COMPLAINT Under: Title 18 USC 241-242, and 42 USC 1331 JURY TRIAL DEMANDED Original Filed September 13, 1989 Ann A. Birch Clerk, Columbia, SC

A complaint was filed in this matter on September 13, 1989. Rawley Patton was the plaintiff. He sued the defendants named above and others involved in a conspiracy. He sued pursuant to Civil Rights statutes, primarily.

The plaintiff alleged that under color of state law, which was never denied, his constitutional rights were violated. The Complaint was verified.

Patton alleged that public officers had improperly trespassed upon his property; that he had his property confiscated, under color of law by the defendants.

The plaintiff alleged that the defendants did violate due process in that they knowingly, intentionally and wilfully served eight repetitive, and duplicative warrants that were not substantiated by any probable cause. Defendants served these warrants when there had been no crime and no measurable damages and no corpus delicta. Patton alleged that they served these eight warrants all of them were repetitious and

a malicious abuse of process and an act of malicious prosecution for the sole purpose of obtaining a higher surety bond from the plaintiff at the time of his arrest, even if any one had merit. He alleged that, for one alleged offense, they had caused him to pay eight times the $400 per warrant bond, thereby requiring a $3,200 bond prior to release from prison, rather than the proper $400 price.

The plaintiff alleged further that his due process rights were violated in that the defendants had entered his property during the night time on August 30, 1989, and kidnapped the plaintiff, taking him in handcuffs, without reading him his Miranda rights and without any probably cause on a matter that was identical to that previously adjudicated

in 1988 so that double jeopardy attached, and while the matter that was still in litigation in the South Carolina courts. The plaintiff alleged that this was part of a continual harassment of him under color of state law, with intimidation and defiance of the plaintiff's rights.

The plaintiff alleged that the defendants confiscated and trespassed upon his personal property rights. They charged him with an alleged crime for not having license tags and state inspection stickers on personal property (ie. vehicles) which are not used on the public highways and are for the sole purpose of his domestic labor in his own domain and for his pleasure and happiness. He alleged that Warrant C-464746, C-464749, C-464751, and C464754 all charged the same crime and were part

of a malicious abuse of process and beyond the scope and authority of law.

The plaintiff alleged that the defendants were acting beyond the scope of any authority that they had and they were acting contrary to South Carolina law.

The plaintiff alleged that the defendants, as individual, acted in a conspiracy, and attempted as a constructive fraud to usurp the private property rights of plaintiff under color of law and under coercion and duress, and under threat of criminal penalty. They sought to take away his property without paying just compensation, as well as invade his privacy and interfere with his Constitutional rights.

The plaintiff alleged that the defendants, in the process of serving

these eight illegal warrants, wilfully, knowingly and intentionally entered the plaintiff's home and interfered with his video camera picture taking of their activities, trying to destroy vital evidence of their false arrest and their activities.

The plaintiff further alleged that he was subjected to an illegal court in South Carolina, as the state's Magistrate court and that he consistently had his constitutional rights violated before the state court and the court refused to allow a jury to consider his claim that his Constitutional rights were being violated by the local county zoning ordinance.

The plaintiff requested, by way of relief, monetary compensation for damages for headache, troubles, false arrest,

mental anguish, intimidation, harassment, false imprisonment, deprivation of civil rights, liberties and immunities, malicious and selective prosecution, malicious abuse of process, and conspiracy all before a jury. The plaintiff further sought injunctive relief, removal of the state action to federal court, punitive damages and other relief. The Complaint was verified and the defendants never attempted in any manner to meet the matters set forth or to clarify factually the exhibits set forth in this Complaint.

A Request for Temporary Restraining Order was further served on or about September 13, 1989.

Pertinent facts that were revealed therein were that the Plaintiff has consistently utilized his property in the

present manner since 1952, preceding any zoning laws. The defendants were threatening to serve 8 to 10 arrest warrants a week. The plaintiff alleges in paragraph 5 of his Application for Injunctive Relief, and specific facts that showed that the state court proceedings were becoming a circus.

The plaintiff alleged that even though he has lung problems, he was imprisoned in dangerous conditions and he was treated improperly in prison.

It is interesting to note that the defendants filed an answer on October 6, 1989. They did not initially deny a single allegation of the Complaint and all the allegations of the amended Complaint. The defendants raise several defenses:

(1) That there was no claim for relief

stated:

(2) That the federal questions are frivolous and unsubstantial;

(3) That there is no civil rights action alleged because no Constitutional rights have been violated;

(4) As a rather unusual separate defense, there is a belated and vague specific denial of allegations clearly in bad faith since many of the facts are verified by subsequent affidavits filed by the defendant as a blatant violation of Federal Rule of Civil Procedure No. 11;

(5) That there is immunity for civil rights violations which is clearly not true;

(6) That there is immunity for officers under the 11th Amendment which is clearly not the law;

(7) That the defendants are immune because they are acting in good faith which is clearly not the law;

(8) That the defendants are immune because they did not act maliciously or under corrupt motive which is clearly not the law;

(9) That there is immunity because they were following specific laws which is clearly not a defense; and

(10) That they have immunity because they were acting in their official duties.

The answer is a study in clear violations of Federal Rule 11. Defenses are raised that are untrue or clearly not defenses at law.

On the same date, October 6, 1989, the defendants filed a Motion for Summary Judgment. The motion did not specify the

basis of the claim of summary judgment. Rather, it was accompanied by Memorandum that claimed summary judgement was appropriate because of passage of a zoning ordinance, 25 years after the plaintiff's long recognized rights to the use of his property. Defendants argued this subsequent zoning enactment had no obligation to grandfather any pre-existing or non-conforming uses for the business of restoring and maintaining antique cars. In fact, the Motion was totally silent about discussing plaintiff's non-conforming uses, and did not even mention antique car businesses at all. In fact the Court never even considered the zoning ordinance nor was it presented to the Court. Nothing!

The defendants claimed that Section 2-2.5 of the Zoning Ordinance had various

enforcement provisions but showed no connection to the plaintiff, save by inadmissable conclusion. It is glaringly noteworthy that the zoning ordinance was never produced. The Magistrate was guessing at what he thought the zoning ordinance was. He accepted solely what defense counsel had put in his memorandum by way of conclusion.

In any event, the defendants claimed that the plaintiff's antique car business work fell under the category of junk, salvage, scrap or wrecking yards, without proof, evidence or logic. There was no absolutely no showing in any way that the plaintiff was in violation of the zoning ordinance. Rather, has an exercise of total illogic, the defendants' brief simply states that there is an ordinance, that having a wrecking yard is illegal,

and that various officers sought to prosecute Rawley Patton without any suggestion that his 20 year antique car business was a junk yard, or wrecking yard, or in any way intended to be with the ordinance that was totally missing!

The record is devoid of any showing of any violation of law by Rawley Patton. Rather, the record was replete with Constitutional violations by defendants.

The record is devoid of any showing that Rawley Patton's antique automobile collection, that he was lawfully using for 25 years prior to the zoning ordinance, in any way constituted junk. Mr. Patton's claims clearly showed that they were not junk, but were rather valuable antiques.

Various affidavits were filed. For example, William T. Smith filed an

affidavit as Magistrate for Richland County. Rather than state facts, his affidavit is filled with conclusionary matters and matters that were inadmissable, i.e. "Affiant understands that Rawley Patton attempted to further appeal his conviction to the Supreme Court of South Carolina and that said appeal was similarly dismissed," "On or about August 25, 1989, Charles Vardell and Mike Spearman, known to the affiant to be co-enforcement officers of Richland County satisfied affiant that probable cause existed,"without indicating what the crime or what the facts were that were shown. "That further violations were shown on August 28, 1989 without any showing that these weren't the identical violations being prosecuted." " That affiant did not set bond for Rawley

Patton but understands that the same was set by a Magistrate Womble." That proceedings "have at all times been just and appropriate.: This affidavit is a travesty from a judicial officer; it denies admissible evidence. In fact, there is not even a shred of evidence that anyone ever looked at the zoning ordinance; that anyone ever knew what the charges were against Rawley Patton; that anyone ever showed that there was junk on his property as opposed to antique cars, or that anyone in the State of South Carolina were concerned with due process of law. Never did they address their refusal to give him any hearing on his property right deprivations.

As an example, one of the exhibits presented, Exhibit 6, showed that the violation charged was against Section

7-1.4(6) of the Richland County Ordinance which states:

> "Automotive vehicles or trailers of any kind or type without current license plates and current inspections stickers, if applicable shall not be parked on any residentially zoned property, other than in completely enclosed buildings."

There is no showing that antique cars being worked on were "parked" or were even considered part of the automotive vehicles that were contemplated. Nor was there any consideration of the fact that Mr. Patton had a 25-year-long vested property interest in the continuation of the uses of his property he had made since 1952 when the 1977 ordinance was amended.

Mr. Patton clearly filed a number of documents expressing his lack of sophistication or familiarity with legal

niceties, but his total instinct for justice that was being violated.

Most noteworthy was the fact that the only notice Mr. Patton got of the December 1, 1989 hearing specified, by order of Stacy S. Wilson for Anne A. Birch, Clerk of the Court, that there was to be a status conference. The status conference turned out to be an ambush by a clearly partisan and adversarial Magistrate who refused to consider the matters presented by Mr. Patton and more importantly, refused to consider the total gaping holes in the Motion for Summary Judgment.

On November 15, 1989, Rawley Patton had submitted a sworn affirmation containing further facts, even recognizing that the sworn Complaint had never even been challenged by the Motion

for Summary Judgment.

The Magistrate ignored the fact and the document affirmed by Rawley Patton on November 14, 1989, that Charles C. Vardell had admitted he didn't know if there was any Complaint against Rawley Patton. Patton showed other glaring contradictions in Vardell's testimony. Patton points out that he was grandfathered in the usage that he had been making since 1952. The judge totally ignored the fact that there had been eight additional warrants issued for the very same alleged crime that was in the process of being adjudicated in South Carolina courts.

The Magistrate totally ignored that William T. Smith filed an affidavit saying that he was elected a Magistrate contrary to the showing that he was only

appointed a Magistrate.

The Magistrate ignored the clear due process violations on a zoning enforcement order of going to Patton's house, the home of an elderly couple, and arresting them in the middle of the night as admitted by John Doudoukjian. The Magistrate ignored John Doudoujian's conclusions that admission was voluntarily granted while noting that Patton was videotaping the procedures which would show the contrary. The Magistrate allowed such self-serving conclusions by the sheriff's deputy that they "conducted themselves in an appropriate and proper manner" and ignored the contrary evidence presented by the plaintiff.

The Magistrate ignored the admissions by Leroy Gadson that he had

interfered with the plaintiff's videotaping events on his own property and allowed the self-serving conclusion that he was granted admittance into the residence while the plaintiff clearly showed to the contrary. The Magistrate allowed the F.M. Spearman conclusions that there were zoning violations and ignored the fact that the state officers were attempting to change valuable antique automobiles into junk and the junk was all the zoning ordinance could enforce. The Magistrate ignored the fact that the premises were heavily posted against trespassing and claimed that the barging in by the officers was a voluntary admittance. Most glaring was the Charles C. Vardell affidavit, contradicting the others and claiming that the violations were for "possession

of unlicensed motor vehicles" when the very ordinance cited was shown to only cover the requirement of licenses when required. There was never any showing that the storage and maintenance of antique automobiles not used on the road ever required licenses. In short, the defendants showing was a total travesty, without logic, without admissible evidence, and in no way meeting the allegations of the Complaint.

A review of the transcript of the Magistrate reveals heightened abuse of any form of judicial discretion. The Magistrate acted in a totally partisan manner. The Magistrate attempted to set up what is known as a "straw man" by attempting to euchre Rawley Patton into stating that he thought that all zoning ordinances were unconstitutional. The

Magistrate ignored the gist of his Complaint and attempted to quote Rawley Patton as saying that the gist of his Complaint was far more limited than shown.

The essence of Rawley Patton's complaint was the attempt to interfere with the grandfathering of an antique car storage facility by the mere magic wand of calling these valuable antique cars "junk". There was never evidence, testimony nor logic in making that transition. A further gist of the Complaint was a showing of tremendous abuse of state power by repetitive complaints, terrorist tactics and abuse of an elderly citizen in the exercise of the protection of his property rights.

Thereafter, an improper standard on the Motion for Summary Judgement was

adopted by order of the Magistrate. On October 12, 1989, he ruled that if the plaintiff fails to adequately respond to the Summary Judgement, within 34 days the Motion would be granted, thereby changing the burden of proof. The Magistrate did not examine the total inadequacy of the Motion for Summary Judgement. In the guise of following the fairness of adequate notice to a pro se litigant, the Magistrate changed the entire balance of the burden of moving and procuring a Summary Judgement.

The plaintiff was not eloquent in his defense. This does not justify the Magistrate's failure to act fairly and impartially in the case.

The plaintiff did make the point that he had been utilizing this property for the purposes of restoring antique

cars (and never as a junk yard) and the defendants were effectively taking his property from him without just compensation. The plaintiff made the further point that concerting this zoning dispute, the defendants were unfairly abusing criminal mandates and statues in order to bring about their cause. It is noted that the defendants never brought a civil action nor did they ever bring a zoning action of any kind, but rather proceeded only under the false assumptions that the criminals statutes were the proper way to go and under the further false assumption that "parking" of automobiles properly adjudicated a case of a 38-year usage, 25 of which was without any zoning ordinance, of premises for restoration of antique automobiles.

The Magistrate did not deal and

ignored, out of hand, the various miscarriages of justice and denial of due process that were perpetrated against the plaintiff in protection of his property rights. These included late night arrests, allegations that were never counted of a kangaroo court, rulings that were unfair, the use of eight criminal arrest warrants were clearly repetitious and without probable cause, and the abuse of the South Carolina courts by government on behalf of government against property rights.

The court totally ignored and failed to have a hearing on the clear conflict of testimony that the South Carolina courts by government on behalf of government against property rights.

The court totally ignored and failed to have a hearing on the clear conflict

of testimony that the South Carolina courts had no jurisdiction to try the plaintiff in Magistrate's court, and that due process of law was clearly violated by the defendants. The witness, Andrew Melechinsky, also pointed out that various articles of the South Carolina Constitution were being ignored.

The Magistrate clearly ignored the proof as follows:

(1) That plaintiff owned his property and utilized the same as such for many years before any ordinance;

(2) That the only notice plaintiff would ever receive was to remove "unlicensed vehicles" under circumstances where it was very clear that the antique vehicles being restored required no license since they were not utilized on the

road;

(3) That the plaintiff received a show cause order and requested a hearing and was refused to be given any hearing on this clear matter of adjudication of property rights, as an obvious violation of due process of law;

(4) That plaintiff, on December 3, 1987, received an adjudication that he was in violation of the zoning law without ever having due process of law to adjudicate his rights;

(5) On January 18, 1988, plaintiff received a show cause order, having twice demanded a hearing and with no hearing as to why he should not be subject to a restraining order to allow the persons to come on his property without any Fourth

Amendment compliance;

(6) On January 27, 1988, the defendants executed against plaintiff a clearly illegal arrest warrant without the court ever getting any explanation as to how a warrant dated in the future could be executed at a time prior to the effective date;

(7) On April 5, 1988, plaintiff was convicted in Magistrate's court without being allowed to read to the jury the basis of his defense by way of Constitutional guarantees;

(8) On April 5, 1988, plaintiff was denied his ordinary appeal rights that allowed ten days to appeal;

(9) Plaintiff was not allowed a transcript of the Magistrate's hearing and a full transcript was not kept;

(10) At the time of the appeal, the court refused to allow a stenographic transcript be taken by plaintiff of the proceedings;

(11) Throughout all the proceedings in the South Carolina court, not one court would make mention or allow mention of the Constitutional guarantees of the Federal Constitution and for that reason, brought this action;

(12) The plaintiff showed, without equivocation, that each of the affidavits filed on behalf of the defendants' Summary Judgement was false;

(13) Especially, plaintiff showed that the sheriff's entry in the home was illegal, without permission and contrary to prior advice that they

were not welcome, under circumstances where there was absolutely no justification for the late night invasion of plaintiff's home.

Thereafter, the Magistrate made a report and recommendation to dismiss this case. This report and recommendation clearly did not give any care or attention to the issues raised by the plaintiff even though they were admittedly raised in laymen's fashion. Despite the lack of eloquence and lack of intellectual superiority in the manner in which plaintiff presented these arguments, it was very clear that the plaintiff alone in the proceedings, and neither the Magistrate nor the defendants had a firm respect and appreciation for our system of justice, a trust in its

adjudication facilities, and a lack of cynicism for the manner in which judgement would be rendered. This was contrasted with a relative "gang rape" mentality against a pro se plaintiff for the sole reason that our legal system is unable to provide attorneys who are available at an affordable price to represent citizens in defense of their home and property. This is a case of ample demonstration of the current failings of our legal system and the refusal of the lower courts to deal with the issue.

For example, the case of April 5, 1988, Richland County Court, Magistrate William T. Smith, the defendant, ignored that the jury was totally picked by one side. The Magistrate ignored the fact that the plaintiff had been refused to

present his case before the jury. In other words, the rather common-occurring phenomena came where the jury was given a picture with only one option and the essence of a two-sided case was denied the plaintiff. The plaintiff's second objections to the Magistrate's report and recommendation is a noteworthy analysis of the "clubhouse" or "good ol' boy" attorneys' approach to ignore the less scholarly presentation of a sincere and victimized American citizen who is being maltreated by lawyers. The Magistrate in court actually ignored these.

Summary Judgement was ordered before the second report was even in. The Magistrate ignored the reports of witnesses that said the Magistrate acted more like a prosecutor than a judge.

It is noteworthy in the court's

order, filed March 1, 1990, that the court adopted the Magistrate's clear misstatement of the plaintiff's position. The court stated that plaintiff was saying that any zoning ordinance was illegal and that clearly was not the case. The court ignored the fact that the zoning ordinance was never even before the court; that antique cars are not "junkyards" or "junk"; that all forms of due process had been violated. In other words, the court acted as an adversary and not as a fair adjudicator and certainly never considered the bulk of the major arguments.

QUESTIONS OF LAW

1. Can this court tolerate a "gang violation" type of adjudication below with an inadequate summary judgement, clearly unconsidered significant issues

of Constitutional violation, and a judicial advocacy's role in protecting other attorneys and judges, in the guise of a civil rights litigation.

2. Were substantial Constitutional issues raised as to illegal criminal proceedings below, a failure of due process in the administration of zoning ordinances, an improper adjudication that a longstanding grandfather's antique automobile restoration project can be converted by a snap of the fingers to a junkyard, and can an existing business of restoration of automobiles be wiped out without any compensation.

3. Did the court below give merely the appearance of justice rather than the substance and spirit of fair adjudication, thereby interfering with the plaintiff's rights under the First

Amendment to petition for redress of grievances, contrary to the oath of the Magistrate and judge below.

ARGUMENT OF LAW

This case is a shocking example of the Federal Judiciary falling short of fairness, proper judicial administration, and honoring the substance of the law.

1. The case below was handled by an unfair and adversarial Magistrate, granting Summary Judgement upon an inadequate pleading that did not challenge the Constitutional questions raised, and through procedures that ignored the layman's attempt to present fair Constitutional issues before the Court.

2. There was numerous unanswered allegations, verified by facts presented and a verified Complaint of

Constitutional violations, including a denial of due process and refusal of hearing concerning important property rights in the state court, irregularity of state court proceedings and improper police tactics on a zoning matter against a citizen with clear property rights, a total failure of every showing what the zoning ordinance held and did not hold and an illogical and imaginative conversion of an antique automobile restoration business of over 20 years standing into a "junkyard" without any factual showing or without any hearing below, and the destruction of an existing business lawfully maintained since 1952 by a zoning ordinance without any compensation as required by the Fifth and Fourteenth Amendments to the United States Constitution.

3. The case below was a travesty in affording pro se litigants even the appearance of justice contrary to the First Amendment of the United States Constitution guaranteeing the right to petition for redress of grievances.

A. The Atmosphere of Prejudice

The essence of due process before the federal courts is an atmosphere of fair adjudication.

The account traces itself to the fact that the very first lawyers were simply personal friends of the litigant, brought into court by him so that the litigant might "take counsel with them" before making decisions.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Rawley Patton, Plaintiff, vs. Charles C. Vardell, F.M. "Mike" Spearman Judge William T. Smith Deputy John Doudoukjian, Deputy Leroy Gadsen, and others involved in the conspiracy against the plaintiff, each in their individual capacities, Defendants.	CA No. 3:89-2280-6B ORDER ENLARGING TIME FOR DEFENDANTS TO ANSWER

Upon request of counsel for all Defendants, and for good cause shown, the time for Defendants to answer the Complaint to the Plaintiff or otherwise file responsible pleadings is hereby enlarged pursuant to Rule 6(b), Fed.R.Civ.P., from an original deadline of October 4, 1989 until November 1,

1989.

IT IS SO ORDERED.

Henry M. Herlong, Jr.
United States Magistrate

Columbia, South Carolina
September 28, 1989

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Rawley Patton, Plaintiff, vs. Charles C. Vardell, et al. Defendants.	ORDER ENLARGING TIME CA No. 3:89-2280-6B

Upon Motion of the Defendants, and for cause shown, the time for responding to the Request for a Temporary Restraining Order in the above-captioned civil action is enlarged until November 15, 1989.

AND IT IS SO ORDERED.

The Honorable Henry M. Herlong, Jr.
United States Magistrate

Columbia, South Carolina
October 2, 1989.

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Rawley Patton, Plaintiff, vs. Charles C. Vardell, et al. Defendants.	)	ORDER CA No. 3:89-2280-6B

A motion to dismiss or for summary judgement has been filed in this case that was brought originally by an individual who is without counsel. Because the plaintiff has no attorney, the Clerk is directed to send him by mail a copy of this Order, an explanation of summary judgement procedure, and a copy of pertinent extracts from Rule 12 and Rule 56 of the Federal Rules of Civil Procedure.

The plaintiff shall have a period of thirty-four (34) days from the date of this Order to file any material he wishes to file in opposition of the motion in accordance with the requirements explained in the Rules, and if he fails to respond adequately, the motion may be granted, thereby ending this case.[1] Careful attention should be given to the requirements of Rule 56(d) concerning the necessity for affidavits filed in opposition to summary judgement to be based on personal knowledge, to contain facts admissible in evidence, and to be executed by a person who would be competent to testify as to matters

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[1]This is one month plus four days mail time, and the time will not be enlarged unless highly persuasive reasons are submitted <u>under oath</u> to support motion to enlarge time.

contained in the affidavit if he were called to the witness stand. Affidavits or exhibits pertaining to matters that are not involved in this case will not be considered by the court, nor will affidavits that contain only conclusory statements or arguments of facts or law.

A person who is representing himself in federal court may submit a brief or memorandum containing argument if he desires to do so, but this is not required. However, submission of a brief, or even the filing of a reply to an answer or return, will not be sufficient alone to withstand a properly supported motion for summary judgement.

This Order is entered at the direction of the court.

_____
United States Magistrate
Dated: October 12, 1989

EXPLANATION OF SUMMARY JUDGEMENT PROCEDURE
(For plaintiffs or petitioners who do not have counsel)[2]

Most pro se litigants are prisoners who seek federal habeas corpus relief or relief or relief available under civil rights statutes, 42 U.S.C. §1983 et seq. Generally, the only issues federal courts entertain in such cases are alleged violations of rights secured by the Constitution. The Federal Rules of Civil Procedure apply in all civil rights cases, and the rules applicable to pleadings and motions apply for the most part in federal habeas cases started by state (or federal) prisoners.

When a defendant (or a respondent) moves or pleads for summary judgement under Rule 56, or sets up in a motion or pleading a defense that the plaintiff (or petitioner) has failed to state a claim upon which relief can be granted, he is arguing, in effect, that a constitutional claim has not been shown by the

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[1]This explanation, or one of similar import, is required by Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), which was a civil rights case. The same procedure applies in federal habeas corpus cases under Webb v. Garrison, No. 77-1855 (4th Cir., decided July 6, 1977).

plaintiff's complaint (or the petitioner's petition). If affidavits or other material are submitted by a defendant (or respondent) to support that defense, and if the court accepts such matter outside the pleading, the court rates the submission as a request for summary judgement under Rule 56 of the Federal Rules of Civil Procedure.

Whenever one or more affidavits or other material outside the pleading of a defendant (or respondent) are served on a pro se plaintiff (or a pro se petitioner), he cannot rest upon the allegations or denials of his own pleadings. He has a right to file one or more opposing affidavits or other exhibits, and indeed must do so if his action is to survive. If this is not done, the court may very well grant summary judgement against him. [This is true also if the parties are all represented by counsel.]

All affidavits submitted by pro se litigants must meet the standards required by Rule 56, which standards can be determined from the following quotation of a portion of Rule 56(e):

> "(e) Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated

therein."

If a pro se litigant does not fully understand what facts would be admissible, and who would be competent to testify, he should not withhold affidavits, for the court will determine whether these standards are met by his affidavit(s).

Under Rule 56(f), if a person served with affidavits cannot obtain opposing affidavits, he must submit to the court his own affidavit, stating why he cannot present by affidavit facts essential to justify his opposition to the facts set out in the affidavits served by the opposing party. Under Rule 56(g), all affidavits submitted to the court must be made in good faith (and, obviously, the facts sworn to must be true), and appropriate action will be taken by the court if it is satisfied that affidavits are presented in bad faith, or solely for the purpose of delay.[2]

UNITED STATES MAGISTRATE
Columbia, South Carolina

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[2]All affidavits submitted by all parties are submitted under penalties of perjury or subornation of perjury (18 U.S.C. §§ 1621 and 1622).

EXCERPTS FROM RULE 12 AND RULE 56
Federal Rules of Civil Procedure*

Rule 12(b) provides, in part:

**** If, on a notion asserting the defense ... to dismiss for failure of the pleading (this means the complaint, motion or petition) to state a claim upon which relief can be granted, matters outside the pleading (here meaning the answer or return) are presented to and not excluded by the court, the motion shall be treated as one for summary judgement and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent (that is, having some connection with the matter or matters in dispute) to such a motion by Rule 56."

Rule 56 provides, in part:

"(b) ... A part against whom a claim ... is asserted or a declaratory judgement is sought may, at any time, move with or without supporting affidavits for a summary judgement in his favor as to all or any part thereof."

"(e) *** When a motion for summary judgement (and this includes a Rule 12(b) motion to dismiss) is made and supported as provided in this rule, an adverse party (this is the plaintiff(s) or the petitioner(s)) may not rest upon the mere allegations or denials of his pleading (meaning the complaint, motion or the

petition), but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. (Emphasis added to show that specific facts are required, not conclusory allegations or argument.) If he does not so respond, summary judgement if appropriate, shall be entered against him."

See attached explanation of summary judgement procedure for a quotation of a part of Rule 56(3) as to the form and sufficiency of affidavits filed in support of or in opposition to a motion for summary judgement. Rule 56(3) also requires that copies of all papers referred to in an affidavit must be attached to the affidavit, and that such copies must be sworn to or certified.

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* The material contained within brackets is inserted by was of explanation of terms used, and is not a part of the Rules quoted. These extracts are prepared for the use of state and federal prisoners who submit complaints, petitions, or § 2255 motions to the United States District Court in their own behalf (pro se). The United States Court of Appeals for the Fourth Circuit has expressly or impliedly approved the application of Rules 12 and 56 to petitions for post-conviction relief in federal court pursuant to Title 28, United States Code, Sections 2254 and

2255, as well as to civil rights actions based on Title 42, United States Code, Sections 2254 and 2255, as well as to civil rights actions based on Title 42, United States Code, Sections 1983 and 1985.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Rawley Patton,
Plaintiff,

vs. NOTICE

Charles C. Vardell, et al.
Defendants.

CA # 3:89-2280-6B

Type of Case: Civil

TAKE NOTICE that a proceeding in this case has been set for the place, date and time set forth below:

Place:
United States District Court
1845 Assembly Street
Columbia, S.C. 29201

Room No: Courtroom #6

Date and Time:
Friday, December 1, 1989 at 10:00 a.m.

Type of Proceeding:

Motions Hearing / Status Conference

/s/ ANN A. BIRCH
US Magistrate or Clerk of Court

/s/ Stacey S. Wilson
(by) Deputy Clerk

November 21, 1989
Date
TO: The Honorable Henry M. Herlong, Jr.
United States Magistrate

x Rawley Patton
John C. Zilinsky
Vinton D. Lide
Court Reporter
Courtroom Deputy
Schedule
File

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Filed December 1, 1989
Entered 12/4/89

Rawley Patton, Plaintiff, vs. Charles C. Vardell, F.M. "Mike" Spearman, Judge William T. Smith, Deputy John Doudoukjian Deputy Leroy Gadsen and others involved in the deprivation and conspiracy against the plaintiff, each in their individual capacities, Defendants.	CA# 3:89-2280-6B MAGISTRATE'S REPORT AND RECOMMENDATION

The plaintiff, proceeding pro se, has brought complaint under 42 U.S.C. §

1983[3] against the Richland County State Magistrate and other employees of Richland County. The defendants have filed a motion for summary judgement which was heard before the undersigned on December 1, 1989.

At the hearing, the plaintiff stated that the basis of his complaint is founded pursuant to 42 U.S.C. § 1983[4] alleging that he has been damaged by the defendants acting under color of state

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[3]This case under 42 U.S.C. §1983 is before the undersigned United States Magistrate for all pretrial matters pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 19.00 DSC. Because of dispositive motion is the subject of this report and recommendation, revieww by the court is required.

[4]He has also alleged other inapplicable statues as a basis of jurisdiction.

law. He stated that the gist of his complaint involved the enforcement of county zoning ordinances against him as it involves the use of his property located in Richland County, South Carolina. The plaintiff has previously been convicted of one charge of maintaining an unlicensed vehicle on his property. He was tried before a jury in state magistrate's court for Richland County. He appealed that conviction to the Circuit Court of South Carolina, and his appeal was dismissed. He apparently attempted to appeal further to the State Supreme Court, and his appeal was dismissed. The parties agree that there are presently several warrants pending against him involving allegations that the plaintiff is in violation of the county's zoning ordinances.

The plaintiff claims that he has been damaged because the ordinances are unconstitutional in that they deprive him of the full use and enjoyment of his property without just compensation. He specifically alleges that the county is attempting to prohibit him from having unlicensed vehicles on his property. He further contends that the defendants have unlawfully taken pictures of his property, and he further contends that one lot which he owns has been improperly classified by the county zoning board. In addition, the plaintiff claims that pursuant to the numerous notices and summons which have been served upon him that his right to privacy has been violated. He further alleges that he has been falsely arrested without probably cause.

At the hearing, the plaintiff essentially stated that he does not believe that Richland County has the right to enforce the zoning ordinance which prohibits the unrestricted use of his property.

The defendants have filed affidavits setting forth with particularity the involvement of the defendants with the plaintiff as their actions pertain to enforcement of the zoning ordinance against the plaintiff. Apparently, the plaintiff has not challenged the zoning ordinance in the state courts except to raise the constitutionality of the ordinance during his previous conviction for maintaining an unregistered automobile on his property.

Defendants have cited the case of Euclid v. Ambler Realty Co., 272 U.S.

365, 71 L.Ed. 303, 475, S.Ct. 114 (1926) which is an often cited Supreme Court case standing for the premise that reasonable zoning ordinances do not involve an unjust taking without compensation. That case also stands for the proposition that although a zoning ordinance may involve a "taking" under the exercise of police power, a reasonable ordinance is not a taking which requires compensation under the constitution.

The plaintiff is attempting to obtain an injunction against the defendants for enforcing the county zoning ordinance. Additionally, he is attempting to obtain money damages from the defendants for their involvement in the enforcement of the ordinance. Plaintiff stated at argument that he does

not believe that any ordinance which restricts the use of one's property is constitutional. He, therefore, argues that the enforcement of an unconstitutional zoning ordinance should entitle him to damages against those who enforce the ordinance. His basic argument is clearly against the holding of Euclid, supra, which holds that a reasonable zoning ordinance is enforceable, and that although a zoning ordinance may involve a taking, it is a taking for which compensation is not required. Therefore, based on the materials submitted in support of the defendants' motion for summary judgement and the pleadings is this case, it is

RECOMMENDED that the defendants'

motion for summary judgement be granted.

Respectfully submitted,

/s/ Henry M. Herlong, Jr.
Henry M. Herlong, Jr.
United States Magistrate

December 1, 1989

Columbia, South Carolina

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Filed December 7, 1989
Entered 12/4/89

Rawley Patton, Plaintiff, vs. Charles C. Vardell, F.M. "Mike" Spearman, Judge William T. Smith, Deputy John Doudoukjian Deputy Leroy Gadsen and others involved in the deprivation and conspiracy against the plaintiff, each in their individual capacities, Defendants.	CA# 3:89-2280-6B ORDER

The plaintiff has moved for an enlargement of time to file objections to the report and recommendation of the

magistrate. The plaintiff has stated that he needs additional time because of the delay in receiving the report and recommendation. For good cause shown, it is hereby

ORDERED that the time in which the plaintiff may file objections to the report and recommendation of the magistrate is enlarged for a period of five days.

IT IS SO ORDERED.

/s/ Henry M. Herlong, Jr.
Henry M. Herlong, Jr.
United States Magistrate

December 1, 1989

Columbia, South Carolina

Filed: December 20, 1989
Entered: 12/20/89

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA, DIVISION

Rawley Patton, CA: 3:89-2280-6B

Plaintiff,

v. JUDGEMENT IN A CIVIL CASE

Charles C. Vardell, F. M. "Mike" Spearman, William T. Smith, Jr., John Doudoukjian, Leroy Gadsen, and others involved in the deprivation and conspiracy against the plaintiff, each in their individual capacities,

Defendants.

X - Decision by Court.
This action came to hearing before the Court. The Court have duly heard and adopted the Magistrate's Report and Recommendation,

It is ordered and adjudged that summary judgment is entered for the defendants Charles C. Vardell, F. M. "Mike" Spearman, William T. Smith, Jr., John Doudoukjian, Leroy Gadsen and others involved in the deprivation and conspiracy against the plaintiff, each in

their individual capacities.

/s/ ANN A. BIRCH
Clerk

(By) Deputy Clerk

December 20, 1989
Date

Filed: December 20, 1989
Entered: 12-20-89

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

RAWLEY PATTON,	)	CA# 3:89-2280-6B
Plaintiff	)	
v.	)	ORDER
CHARLES C. VARDELL, F.M. "MIKE" SPEARMAN, WILLIAM T. SMITH, JR., JOHN DOUDOUKJIAN, LEROY GADSDEN, AND OTHERS INVOLVED IN THE DEPRIVATION AND CONSPIRACY AGAINST THE PLAINTIFF, EACH IN THEIR INDIVIDUAL CAPACITIES,	)	
Defendants.	)	

This action, brought pro se pursuant to 42 U.S.C. 1983, comes before the court with the Report and Recommendation of the United States Magistrate. Plaintiff's

constitutional claims derive from the enforcement by defendants of certain Richland County zoning ordinances against him. He contends that Richland County has unconstitutionally attempted to prevent him from having certain unlicensed automobiles on his property, and that defendants have unlawfully taken pictures of his property. He seeks to enjoin the defendants from enforcing the pertinent provisions of the county zoning ordinance against him and also seeks money damages for their enforcement to the ordinance.

Based upon review of the matter, the Magistrate concluded that Euclid v. Ambler Realty Company, 272 U.S. 365 (1926) and its progeny recognized that although zoning ordinances may involve a type of taking, such taking does not

require compensation under the United States Constitution so long as the ordinance is reasonable. Implicitly concluding that the zoning ordinance herein, which forbids the storage of unlicensed vehicles in residential areas unless they are enclosed by a building, is reasonable, the magistrate recommends that defendants' Motion for Summary Judgment be granted.

Plaintiff has submitted Objections to the Magistrate's Report and Recommendation which essentially restate his basic position. They do nothing to convince this court that the Magistrate's Report is factually or legally in error.

Thus, upon consideration of the case, the Magistrate's Report and Recommendation is hereby adopted and made a part of this Order by specific

reference. On the basis set out therein, defendants' Motion for Summary Judgment is hereby granted.

AND IT IS SO ORDERED.

/s/ CHARLES E. SIMONS, JR.
UNITED STATES DISTRICT JUDGE

AIKEN, S.C.
December 18, 1989

Filed: March 1, 1990
Entered: 3/1/90

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

CIVIL ACTION NO. 3:89-2280-6b

RAWLEY PATTON, Plaintiff, v. CHARLES C. VARDELL, ET AL., Defendants.	)	O R D E R

This pro se action alleging constitutional deprivations resulting from the enforcement of certain Richland County Zoning Ordinances comes before the court on plaintiff's Motion for Reconsideration of this court's Ordered

filed December 20, 1989. That Order granted defendants' Motion for Summary Judgment. Plaintiff's Motion for Reconsideration urges that this court did not consider his Second Objections to the Magistrate's Report and Recommendation. Plaintiff is entirely correct that this court did not have his Second Objection when it adopted the Magistrate's Report and Recommendation in the Order filed on December 20, 1989.

After receiving the Magistrate's Report and Recommendation, plaintiff sought an extension of five days in his Order filed December 7, 1989. On December 12 , 1989, plaintiff filed his original Objection to the Magistrate's Report and Recommendation, and the entire file was forwarded by mail to this office. This court considered the matter

and signed its Order granting Summary Judgment on December 18, 1989. The file was mailed back to Columbia along with the Order. Meanwhile, on December 15, 1989, plaintiff had filed his Second Objection to the Magistrate's Report and Recommendation. The Second Objection was mailed to this court by the Clerk's Office on December 18, 1989, and received here on December 21, 1989.

Plaintiff gave no indication in his First Objection that he intended to file additional Objections. This court did not consider itself compelled to vacate the Order which it had already signed and filed when plaintiff's Second Objection was received in these chambers on December 21, 1989. Even so, this court reviewed plaintiffs's Second Objection to convince it that the Magistrate's Report

and Recommendation was erroneous, and it has not changed that opinion.

Plaintiff steadfastly insists that the Constitution and Supreme Court case law forbid any restrictions on the use of private property unless just compensation is paid for the restrictions. That is simply not the law. Reasonably drafted zoning restrictions are constitutional and do not require payment of compensation so long as they do not deprive a property owner of all use of his property. Plaintiff has never alleged that he has been deprived of all use of his property. He contends only that he is forbidden his preferred use of the property.

Thus, upon consideration of plaintiff's Motion for Reconsideration, this court grants the Motion in part,

insofar as the court has reviewed and reconsidered plaintiff's Second Objection. The court declines, however, to alter the ruling set out in its Order filed December 20, 1989, and that Order shall remain in full force and effect.

AND IT IS SO ORDERED.

/s/ Charles E. Simons, Jr.
UNITED STATES DISTRICT JUDGE

Aiken, S. C.
February 27, 1990

Filed: March 19, 1990
Entered: 3/20/90

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

CIVIL ACTION NO. 3:89-2280-6B

RAWLEY PATTON,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	O R D E R
	)	
CHARLES C. VARDELL, ET AL.,	)	
	)	
	)	
Defendants.	)	

This pro se actions comes before the court on receipt of plaintiff's filing entitled "Challenged to and Repudiation of the Unlawful 'Order' of February 27, 1990." As the title of his submission suggest, plaintiff's emphatically objects

to this court's earlier order. Plaintiff's filing, however, contains nothing which persuades this court that its earlier Ordered was erroneous.

This court has construed plaintiff's Challenge and Repudiation as a Motion to Reconsider pursuant to Fed.R.Civ.P. 59. On that basis, plaintiff's Motion is hereby denied.

Plaintiff is advised that if he seeks relief from his court's Orders, he must do so by filing a timely appeal of this court's rulings. He must file Notice of Appeal with the Clerk of this court within thirty (30) days after the date of entry of the judgment or Order appealed from. See Rules 3 and 4, Federal Rules of Appellate Procedure. Plaintiff in further advised that any appeal of this court's rulings should be

made to the Fourth Circuit Court of Appeals, which sits in Richmond, Virginia.

So that plaintiff will have the maximum opportunity to make a timely filing of his Notice of Appeal, the clerk of this court is directed to process this Order and supply it to plaintiff on an expedited basis.

AND IT IS SO ORDERED.

/s/ Charles E. Simons, Jr.
UNITED STATES DISTRICT JUDGE

Aiken, S. C.
March 16, 1990

Filed: March 29, 1990
Entered: 3/29/90

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

CIVIL ACTION NO. 3:89-2280-6B

RAWLEY PATTON,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	O R D E R
	)	
CHARLES C. VARDELL, ET AL.,	)	
	)	
Defendants.	)	

The pro se matter again comes before the court on yet another submission by plaintiff. Plaintiff's most recent submission, filed March 26, 1990, in his Challenge to the Repudiation of the Unlawful "Order" of March 16, 1990.

In the Order of which plaintiff complains, this court advised him that any further appeal of this court's Orders must be made to the Fourth Circuit Court of Appeals in Richmond, Virginia. Plaintiff was also advised that if he fails to make a timely appeal, his right to seek appellate relief may be foreclosed.

Instead of pursuing an appeal, plaintiff continues to waste both his time and the court's previous rulings and/or reassignment of this case to another judge. Plaintiff's present Challenge sets out no basis for altering this court's previous Orders. For that reason, it is denied.

Plaintiff is again advised that relief from this court's Orders can only be achieved by pursuing a successful

appeal to the Fourth Circuit. Further filings of frivolous challenges in this court will be of no benefit to plaintiff.

As noted in this court's Order filed March 19, 1990, plaintiff must initiate any appeal be making a timely filing of his Notice of Appeal with the Clerk of this Court. The clerk is directed to reject any further attempts by plaintiff to file documents seeking reconsideration by this court of its earlier Orders. Plaintiff is advised that if he neglects his opportunity to appeal and instead continues to make frivolous filings with this court, the court may be compelled to invoke its contempt power.

AND IT IS SO ORDERED.

/s/ Charles E. Simons, Jr.
UNITED STATES DISTRICT JUDGE

Aiken, S. C.
March 28, 1990

UNPUBLISHED

APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 90-3052

RAWLEY PATTON,

Plaintiff - Appellant,

verses

CHARLES C. VARDELL;
F. M. MIKE SPEARMAN;
WILLIAM T. SMITH,
Judge; JOHN DOUDOUKJIAN,
Deputy; LEROY GADSEN,
Deputy,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Charles E. Simons, Jr., Senior District Judge. (CA-89-2280-3-6B)

Submitted: August 27, 1990
Decided: September 28, 1990

Before SPROUSE and WILKINS, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Rawley Patton, Appellant Pro Se. Vinton DeVane Lide, LIDE, POTTS & MONTGOMERY, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.
See I.O.P. 36.5 and 36.6.

PER CURIAM:

Rawley Patton noted this appeal outside the 30-day appeal period established by Fed. R. App. P. 4 (a) (1), and failed to move for an extension of the appeal period within the additional 30-day period provided by Fed. R. App. P. 4 (a) (5).* The time periods established by Fed. R. App. P. 4 are "mandatory are jurisdictional." Browder v. Director,

Dep't of corrections, 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)). Appellant's failure to note a timely appeal or obtain an extension of the appeal period deprives this Court of jurisdiction to consider this case. We therefore dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

DISMISSED

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*Patton filed his notice of appeal on April 9, 1990, which was more than 30 days after the court entered its March 1, 1990, ordering denying his timely Fed. R. Civ. P. 59 motion.

FILED: October 23, 1990

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 90-3052

RAWLEY PATTON

Plaintiff - Appellant,

versus

CHARLES C. VERDELL;
F.M.MIKE SPEARMAN;
WILLIAM T. SMITH, Judge,
JOHN DOUDOUKJIAN, Deputy;
LEROY GADSEN, Deputy,

Defendants - Appellees

ORDER

Appellant has filed a pro se petition for rehearing and

suggestion for rehearing in banc.

The Court grants the petition for rehearing and will

consider the appeal on the merits. There was no request by a

member of this Court for a poll of the Court on the suggestion for rehearing in banc.

For the Court

/s/ John M. Greacen
CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 90-3052

RAWLEY PATTON,

Plaintiff - Appellant,

verses

CHARLES C. VARDELL;
F. M. MIKE SPEARMAN;
WILLIAM T. SMITH, Judge;
JOHN DOUDOUKJIAN, Deputy;
LEROY GADSEN, Deputy,

Defendants - Appellees.

On Petition for Rehearing.

Submitted: November 6, 1990
Decided: December 13, 1990

Before SPROUSE and WILKINS, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Rawley Patton, Appellant Pro Se. Vinton DeVane Lide, LIDE, POTTS & MONTGOMERY, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.
See I.O.P. 36.5 and 36.6.

PER CURIAM:

Rawley Patton appeals from the district court's order denying relief under 42 U.S.C. § 1983. Our review of the record and the district court's opinion accepting the recommendation of the magistrate discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court. Patton v. Vardell, CA-89-2280-3-6B (D.S.C. Mar. 1, 1990). We dispense with oral argument because the facts and

legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

FILED: January 8, 1991

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 90-3052

RAWLEY PATTON

Plaintiff-Appellant

v.

CHARLES C. VARDELL; F.M. MIKE SPEARMAN; WILLIAM T. SMITH, Judge; JOHN DOUDOUKJIAN, Deputy; LEROY GADSEN, Deputy;

Defendants-Appellees

On Petition for Rehearing with Suggestion for Rehearing in Banc

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The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a pole on the suggestion for

rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/ John M. Greacen
CLERK

11 - B

FILED: January 15, 1991

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 90-3052

Patton v. Vardell

M A N D A T E

The judgement of this court dated 12/13/90 takes effect today.

JOHN M. GREACEN
CLERK

APPENDIX C

SUPREME COURT OF THE UNITED STATES

No. A-734

Rawley Patton,
Petitioner

vs.

Charles C. Vardell, et al.

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including May 8, 1991.

/s/ William H. Rehnquist
Chief Justice of the United States

Dated this 5th
day of April, 1991.